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No. _____

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1989

GARY R. HAGEBUSH,
ROY E. SCHWASINGER,

Petitioners,

vs.

UNITED STATES, RONALD LAHNERS,
DOUGLAS SEMISCH,

Respondents.

Petition For Writ Of Mandamus To The Attorney General And Secretary Of The Treasury Of The United States

PETITION FOR WRIT OF MANDAMUS

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QUESTION PRESENTED

A. THE LIABILITY OF THE UNITED STATES UNDER *TITLE 28 U. S. C. STAT. 2674* STATES THAT "THE UNITED STATES SHALL BE LIABLE, RESPECTING THE PROVISIONS OF THIS TITLE RELATING TO TORT CLAIMS, IN THE SAME MANNER AND TO THE SAME EXTENT AS A PRIVATE INDIVIDUAL UNDER LIKE CIRCUMSTANCES, ETC." DOES THIS ALSO REFER TO THE EMPLOYEES OF THE UNITED STATES UNDER THE *FEDERAL TORT CLAIMS ACT?*

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PETITION FOR WRIT OF MANDAMUS TO THE ATTORNEY GENERAL AND SECRETARY OF THE TREASURY OF THE UNITED STATES.

Petitioners, Gary R. Hagebush and Roy E. Schwasinger respectfully prays that a Writ of Mandamus issue to compel the Attorney General and the Secretary of the Treasury of the United States to pay damages to Gary R. Hagebush and Roy E. Schwasinger for damages sustained by them from Agencies, Banks, Courts and employees of the United States under the *Federal Tort Claims Act* pursuant to *Title 28 U. S. C. Stat. 2674.*

OPINION BELOW

The memorandum opinion of the United States District Court for the District of Nebraska was filed on March 31, 1989 and is attached as Appendix A.

The Order from the United States Court of Appeals for the Eighth Circuit was dated September 1, 1989, however the order was not received by Petitioners until October 5, letter dated October 2, 1989, is attached as Appendix B.

II.

JURISDICTION

The opinion of the United States District Court for the District of Nebraska was filed on March 31, 1989. The Order from the United States Court of Appeals for the Eight Circuit was dated September 1, 1989. The jurisdiction of this Court is invoked pursuant to *Rules 26 and 27*

of this Court pursuant to *Title 28 U. S. C. Stat. 1361 and 2674* including *Articles I, and VI* of the United States Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

The Constitution of the United States.

The First Article of the United States Constitution provides:

That Congress shall have the power:

3. To regulate commerce with foreign nations, and among the several states, and with the Indian Tribes.

8. To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

18. To make laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the Government of the United States, or in any department or officer thereof.

The Sixth Article to the United States Constitution provides:

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

STATEMENT OF FACTS

A. A suit was brought in Douglas County District Court against Petitioners from First National Bank of Omaha alleging to have converted to a state chartered bank pursuant to *Title 12 U. S. C. Stat. 30.* No record of such a bank could be located, however the Douglas County District Court granted said institution a judgment even though Petitioners through Counsel placed before the court all the evidence that supported their investigation that the institution had misapplied funds to a Canadian Bank without Petitioners consent. The Comptroller of the Currency was notified, including the F. B. I., no action was taken by the United States Attorney for the District of Nebraska even though the Douglas County District Court had granted Petitioners a counterclaim against the bank for damages. The same Court ruled that money had been misapplied pursuant to *Title 18 U. S. C. Stat. 656.*

The Comptroller of the Currency had not terminated the Charter granted the Bank as a National Bank pursuant to *Title 12 U. S. C. Stat. 30.* This authority was granted the Comptroller of the Currency under the National Banking Act. The Comptroller of the Currency and/or the Secretary of the Treasury took no action against the Bank nor recovered for Petitioners the funds that were misapplied or the property seized.

Petitioners purchased product from a Canadian Business that had obtained United States Patents pursuant to *Article I, Section 8, 8* of the United States Constitution. Their rights were violated by the Bank, United States Attorney and the Courts as none of the above would

correct their own errors and grant Petitioners their rights to conduct business between themselves and persons living in Canada pursuant to *Article I, 3 and Article VI, 2* of the United States Constitution after Congress had made a treaty with Canada on trade and had issued Patents in the United States for the same products which the Petitioners had purchased from a Canadian business.

The treaty was granted under *Article VI* of the United States Constitution, however the judges failed to enforce the rights granted petitioners. The United States Court of Appeals for the Eighth Circuit has not allowed Petitioners their rights to collect damages and never overturned the lower courts decision that they were not due and payable to Petitioners under the *Federal Tort Claims Act.*

Ronald Lahners and Douglas Semisch had brought a suit against Roy E. Schwasinger which they later dismissed before United States District Judge Lyle Strom could grant judgment in favor of Roy E. Schwasinger for a false suit. This Court should decide who has jurisdiction over attorneys of law who are federal employees, State or United States District Courts as the Nebraska Supreme Court has already ruled in *Krueger v. Zarley* Cite as 229 Neb. 203, ___ N. W. 2d ___ (1988) that State District Courts have jurisdiction over attorneys of law. However they did not make a decision on this case when it was before them as the case was removed from the Douglas County District Court and United States District Court Judge William G. Cambridge had ruled that the United States Attorney were immuned from prosecution this was upheld by the United States Court of Appeals for the Eighth Circuit as found in Appendix A and B which is contrary to the *Federal Tort Claims Act* under *Title 28 U. S.*

C. *Stat. 2674* as the United States was brought into the case by the United States Attorney.

B. The *Federal Tort Claims Act* provides relief from tort claims under *Title 28 U. S. C. Stat. 2674* for liability of United States, however Petitioners have been unable to obtain a judgment from the Courts even though they have all upheld the damages due Petitioners. This Court under *Rules 26 and 27* may grant Petitioners that right which is pursuant to *Title 28 U. S. C. Stat. 1361 and 2674* and to establish the liability of the United States for tort claims against its employees which the Petitioners are petitioning for after the Courts have granted damages to Petitioners but have refrained from granting judgment.

V.

REASONS FOR GRANTING WRIT

A. THIS CASE PROVIDES THE COURT AN OPPORTUNITY TO DELINEATE THE BOUNDARIES OF JURISDICTION BETWEEN THE LIABILITY OF THE STATES OR THE UNITED STATES ON THE LIABILITY OF ATTORNEYS OF LAW WHO HAVE VIOLATED THEIR OATH AND RESPONSIBILITY.

The Courts have two separate decisions on the liability and jurisdiction over persons licensed as attorneys and what liability they create. Under *Krueger v. Zarley* Cite as 229 Neb. 203, ___ N. W. 2d ___ (1988), the Nebraska Supreme Court stated that cases involving liability of Attorneys of law were under State District

Courts. The Nebraska Supreme Court failed to take jurisdiction over Petitioners Case against Ronald Lahners and Douglas Semisch which is contrary to their prior opinion. *Title 28 U. S. C. Stat. 2674* states *"That the United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, etc."* which is contrary to opinions of the United States District Court for the District of Nebraska which was upheld by the United States Courts of Appeals for the Eight Circuit stating that United States Attorneys are immune from prosecution, however at the same time upholding a counterclaim against a national bank and other related agencies of the United States. This Court pursuant to *Hansford v. National Bank of Tifton, 73 S E 405, 10 GA App. 270 (1912)* has been that *"THE DECISIONS OF THE UNITED STATES SUPREME COURT ARE ULTIMATE AND PARAMOUNT AUTHORITY AS TO THE POWERS AND LIABILITIES OF NATIONAL BANKS."*

Petitioners have not been paid for the damages sustained by the bank even though all courts have upheld that damages had occurred due to misapplication of funds and misrepresentation.

B. THIS CASE PROVIDES THIS COURT WITH THE OPPORTUNITY TO ESTABLISH LIABILITY OF PERSONS EMPLOYED BY THE UNITED STATES UNDER THE FEDERAL TORT CLAIMS ACT.

Title 28 U. S. C. Stat. 2674 states that the United States shall be liable, however the Courts have held that the United States Attorneys are immune from prosecution

which is in direct contrast to this statute. Does this mean all United States Employees?

VI.

CONCLUSION

This case presents an important constitutional issue regarding the liability of the United States pursuant to *Title 28 U. S. C. Stat. 2674* on the liability of the United States for its employees including United States Attorneys and the ability of United States citizens to collect tort claims against the United States pursuant to the *Federal Tort Claims Act.*

Petitioners prayfully request that this Writ of Mandamus be granted pursuant to *Title 28 U. S. C. 1361 and 2674* under *Rules 26 and 27* of this Court for damages already determined by the lower courts and property returned by the lower courts.

Respectfully submitted,

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APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

GARY R. HAGEBUSH and ROY E. SCHWASINGER, Plaintiffs, vs. RONALD LAHNERS and DOUGLAS SEMISCH, Defendants.	CV 88-0-647 ORDER (Filed March 31, 1989)

In accordance with the memorandum opinion issued this date,

IT IS ORDERED that defendant's motion to dismiss is granted and this action is dismissed with prejudice at plaintiffs' costs.

Dated March 31st, 1989.

BY THE COURT:

/s/ William G. Cambridge
WILLIAM G. CAMBRIDGE
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

GARY HAGEBUSH and ROY E. SCHWASINGER, Plaintiffs, vs. RONALD LAHNERS and DOUGLAS SEMISCH, Defendants.	CV 88-0-647 MEMORANDUM OPINION (Filed March 31, 1989)

This matter is before the Court upon defendant's motion to dismiss (Filing No. 4). This action was originally filed in the District Court of Douglas County, Nebraska, and was subsequently removed to this Court by defendants (Filing No. 1). After removing the action, the defendants filed their motion to dismiss stating as grounds that plaintiffs have failed to state a cause of action for which relief can be granted. Having reviewed the motion and finding that it should be granted, the Court need not address any of the other matters currently pending in this action.

Plaintiffs are not strangers to this Court. They have appeared before the Court in a number of actions as evidenced by defendant's request for judicial notice (Filing No. 3). The Court will grant this request. Defendants are also not strangers to this Court. Ronald D. Lahners is the United States Attorney for the District of Nebraska. Douglas R. Semisch is an Assistant United States Attorney, working under Mr. Lahners' direction. The office of the United States Attorney has been involved in a number of the actions mentioned above. It appears,

although the Court cannot be certain, that plaintiffs are now seeking damages from defendants for the alleged actions and inactions of defendants throughout the factual scenarios which are the underlying basis of the aforementioned action. Defendants seeks to dismiss this action claiming that they are immune from being sued by defendant.

A motion to dismiss for failure to state a cause of action for which relief can be granted may be timely filed pursuant to Fed. R. Civ. P. 12(b)(6). In reviewing a motion brought pursuant to Rule 12(b)(6), the Court must accept "plaintiffs" well-pleaded allegations as true and construe the complaint and inferences reasonably drawn from it in favor of plaintiff." *Wells v. Walker*, 852 F.2d 368, 370 (8th Cir. 1988). Accordingly, the motion will be denied unless it appears beyond a doubt that plaintiff can prove no set of facts that will entitle him to relief. *Id.*

The Court, having reviewed plaintiffs' *pro se* complaint liberally, *see Haines v. Kerner*, 404 U.S. 519 (1972), finds that plaintiffs have clearly failed to state a cause of action for which relief can be granted. Plaintiffs have set forth eleven (11) causes of action based upon allegations of "professional negligence, fraud, misrepresentation, racketeering, torts of common law, conspiracy and obstruction of justice, obstructing a criminal investigation, false suit, interference with constractual rights, interference with commerce, interference with business ownership, failure to investigate and prosecute, failure to order an investigation, convene a grand jury or the production of a document on ownership of United States patents as United States Attorneys, tax fraud, mail fraud, and common law." Plaintiffs' Petition, Filing No. 1. As set

forth in the petition, none of these allegations are formulated into any kind of cognizable claim for relief.

Furthermore, the Court considers this action to be completely frivolous. Therefore, the Court, upon its own motion, shall impose sanctions upon the plaintiffs. The Court has the power to impose sanctions whenever a plaintiff has filed a frivolous law suit. Fed. R. Civ. P. 11; *Kurkowski v. Volker*, 819 F.2d 201, 203 (8th Cir. 1987). In fact, sanctions are considered mandatory whenever a violation of Rule 11 occurs. *O'Connell v. Champion Intern. Corp.*, 812 F.2d 393, 395 (8th Cir. 1987). If the Court finds that the plaintiffs have filed frivolous pleadings or pleadings that are "legally unreasonable, or without factual foundation," then sanctions should be imposed. *Hartman v. Hallmark Cards, Inc.*, 833 F.2d 117, 124 (8th Cir. 1987), quoting *Lieb v. Topstone Indus., Inc.*, 788 F.2d 151, 157 (3rd Cir. 1986). Additionally, in the proper circumstances, this standard may be applied to *pro se* plaintiffs. *See Kurkowski*, 819 F.2d at 204.

As an appropriate sanction, the Court finds that plaintiffs shall be required to pay to the United States of America the reasonable costs incurred by defendants in defending this action.

In accordance with the determinations made herein, the Court, by separate order issued this date, shall grant defendant's motion to dismiss and dismiss this action, and

IT IS ORDERED that defendant shall have up to and including April 24, 1989, to submit to the Court a report setting forth the reasonable costs incurred in defending this law suit. The Court, at some time thereafter will issue

the appropriate orders imposing sanctions discussed herein.

Dated March 31st, 1989.

BY THE COURT:

/s/ William G. Cambridge
WILLIAM G. CAMBRIDGE
United States District Judge

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 89-2372

Gary R. Hagebush; Roy E. Schwasinger,	*	
Petitioners,	*	Petition for Writ of Mandamus
vs.	*	
United States; Ronald Lahners; Douglas Semisch,	*	
Respondents.	*	

ORDER

After careful review it is hereby ordered that the petition for writ of mandamus is denied.

September 1, 1989

Ordered Entered at the Direction of the Court:

/s/ Robert D. St. Vrain
Clerk, U.S. Court of Appeals, Eighth Circuit